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7590		03/03/2010	EXAMINER	
Elsa Keller			CHAMPAGNI, LUNA	
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1 UNITED STATES PATENT AND TRADEMARK OFFICE
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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

7

8 *Ex parte* WILLIAM A. BANKS,
9 MORGAN L. PAPE, and
10 LUIS CASTILLO
11

12

13 Appeal 2009-006762
14 Application 10/007,105
15 Technology Center 3600
16

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18 Decided: March 3, 2010
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21 Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and BIBHU R.
22 MOHANTY, *Administrative Patent Judges.*
23 FETTING, *Administrative Patent Judge.*

24 DECISION ON APPEAL
25

1 STATEMENT OF THE CASE

2 William A. Banks, Morgan L. Pape, and Luis Castillo (Appellants) seek
3 review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1-26, the
4 only claims pending in the application on appeal.

5 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)
6 (2002).

7 SUMMARY OF DECISION¹

8 We AFFIRM-IN-PART.

9 THE INVENTION

10 The Appellants invented a system for processing product information
11 including product price, description, and supplier information held in one or
12 more database in support of commercial transactions such as product
13 purchasing, procurement, or billing (Specification 1:9-12).

14 An understanding of the invention can be derived from a reading of
15 exemplary claims 1 and 26, which is reproduced below [bracketed matter
16 and some paragraphing added].

17 1. A system for processing product information for supporting
18 commercial transactions, comprising:

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.", filed April 3, 2006) and Reply Brief ("Reply Br.", filed July 13, 2006), and the Examiner's Answer ("Ans.", mailed June 30, 2006), and Final Rejection ("Final Rej.", mailed November 4, 2005).

[1] a first database for maintaining product information including product description, product vendor and associated vendor product pricing information;

[2] a data processor for receiving product information and for updating said first database information to incorporate received product information including product sales data and contract sales terms of a vendor in response to detection of matching records between said received product information and said first database information; and

[3] an interface processor for communicating updated product price information to a system derived based on said product sales data and contract sales terms of said vendor in response to user command.

26. A method for processing product information for supporting commercial transactions, comprising the steps of:

[1] maintaining, in a first database, product information including product description, product vendor and associated product pricing information;

[2] receiving product information from a remote application;

[3] updating said first database information to incorporate received product information in response to detection of a difference between stored product information and said received product information;

[4] automatically modifying at least one element of the updated product information in the first database according to predetermined rules, and

[5] initiating display of at least one of updated and modified product information in response to user command.

THE REJECTIONS

The Examiner relies upon the following prior art:

1 Litzow et al. US 2003/0093414 A1 May 15, 2003

1 Claims 1-26 stand rejected under 35 U.S.C. § 102(e) as anticipated by
2 Litzow.

3 ISSUES

4 The issue pertinent to this appeal is whether the Appellants have
5 sustained the burden of showing that the Examiner erred in rejecting claims
6 1-26 under 35 U.S.C. § 102(e) as anticipated by Litzow. This pertinent issue
7 turns on whether Litzow describes updating pricing information based on
8 product sales and contract terms of vendors.

9

10 FACTS PERTINENT TO THE ISSUES

11 The following enumerated Findings of Fact (FF) are believed to be
12 supported by a preponderance of the evidence.

13 *Facts Related to the Prior Art*

14 *Litzow*

15 01. Litzow is directed to a method and system for more efficiently
16 matching desired goods, services and offer terms for those goods
17 and services to willing consumers facilitating commercial
18 transactions (Litzow ¶ 0002).

19 02. The system utilizes a communications network, such as a WAN
20 or LAN (Litzow ¶ 0084). The operational components of the data
21 processing system (DPS) include a customer database, a
22 transaction database, a vendor database, and a customer service

1 database (Litzow ¶'s 0086 - 0089). The customer database stores
2 all customer data, including demographic information, credit
3 history, purchase history, and survey responses (Litzow ¶ 0086).
4 The transaction database contains information regarding the goods
5 and services sold in the system, including information as to
6 persons projected to have an affinity to the products and services
7 (Litzow ¶ 0087). The transaction database is continuously being
8 refined by the offerings of various vendors (Litzow ¶ 0123). For
9 example, if a consumer purchased a newly offered package of
10 cable channels, that package may not at the time of the purchase
11 be included in the transaction database and the DPS institutes a
12 new designation for this new service (Litzow ¶ 0123). The vendor
13 database contains all vendor information, including defined
14 products, product pricing information, and delivery information
15 (Litzow ¶ 0088). The customer service database stores all service
16 requests for existing transactions (Litzow ¶ 0089).

17 03. The method begins with the customer enrolling with the
18 system, which includes the customer specifying vendors and
19 where vendors should send the bills (Litzow ¶ 0091). The system
20 records various customer transactions over time and optionally,
21 records the customer's responses to various questions (Litzow ¶
22 0092). The system continues to refine customer information using
23 transactional information, third party information, and other
24 supplemental information until the customer is deemed
25 acceptable. Litzow ¶'s 0092 - 0093. The customer is then entered
26 into a "closed market" of customers in the customer database.

Litzow ¶'s 0092 - 0093. The "closed market" of customers is used for demographic analysis. Litzow ¶ 0093. Transactional information about a customer is recorded and stored. Litzow ¶ 0094. Details from items billed to a customer are used to increase the precision with which direct marketing efforts are made towards that customer. Litzow ¶ 0095.

PRINCIPLES OF LAW

Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

ANALYSIS

Claims 1-26 rejected under 35 U.S.C. § 102(e) as anticipated by Litzow

The Appellants first contend that Litzow fails to describe continuously updating and maintaining accurate product pricing based on product sales

1 data and contract sales terms of a vendor, as per claim 1. Since Litzow is
2 only concerned with developing a direct marketing strategy for a customer.
3 App. Br. 9. We agree with the Appellants. Limitation [3] of claim 1
4 requires communicating updated product price information based on product
5 sales data and contract sales terms of a vendor.

6 Litzow describes a system that utilizes several databases to store
7 information. FF 02. The databases are continuously being updated based
8 with transactional information and demographic information as related to a
9 customer or a vendor. FF 02. The information stored in the databases is
10 used to continuously develop and increase the precision of direct marketing
11 towards a customer. FF 03.

12 Litzow further describes refining product information based on the
13 offerings made by various vendors. FF 02. However, Litzow fails to
14 specifically describe updating product price information. Litzow is also
15 silent on the features requiring the updated pricing information to be based
16 on sales data and contract sales terms of vendors.

17 The Examiner broadly found that claim 1 is an apparatus with massive
18 intended use phrases. Ans. 4. However, the Examiner failed to point to any
19 specific features or limitations of claim 1 that should not be afforded
20 patentable weight. The Examiner also failed to point to any portion of
21 Litzow that describes a feature of updating pricing information based on
22 sales data and contract sales terms. As such, we find nothing on the record
23 that suggests that Litzow anticipates claim 1.

24 Independent claims 4, 16, and 21 also require updating pricing
25 information based on sales data and contract sales terms of a vendor.

- 1 Defendant claims 2-3, 5-15, 17-20, and 22-25 also incorporate this feature.
- 2 As such, Litzow fails to anticipate 1-25.

3 Since we find this argument determinative, we need not reach the
4 remaining arguments with respect to claims 1-25.

5 With respect to claim 26, the Appellants contend that Litzow fails to
6 describe limitations [3] and [4]. App. Br. 26-27. We disagree with the
7 Appellants. Limitation [3] requires updating production information in the
8 first database in response to a difference between stored information and
9 received product information. Limitation [4] further requires automatically
10 modifying an element of the updated product information according to
11 predetermined rules. We note that claim 26 does not limit the updating of
12 product information to be updating pricing information based on sales data
13 and contract sales terms of a vendor.

14 As discussed *supra*, Litzow describes using acquired transaction and
15 demographic data to continuously increase the precision of a direct
16 marketing strategy. FF 02 - 03. Litzow further explicitly describes that
17 product information and offerings are continuously being refined. FF 02.
18 That is, Litzow describes updating product information when stored
19 information does not match or contains new product information. This
20 simply correlates to a predetermined rule to update the database with new
21 services that are not found in the database. As such, Litzow describes
22 limitations [3] and [4] and Litzow anticipates claim 26.

1 **CONCLUSIONS OF LAW**

2 The Appellants have sustained the burden of showing that the Examiner
3 erred in rejecting claims 1-25 under 35 U.S.C. § 102(e) as anticipated by
4 Litzow.

5 The Appellants have not sustained the burden of showing that the
6 Examiner erred in rejecting claim 26 under 35 U.S.C. § 102(e) as anticipated
7 by Litzow.

8 **DECISION**

9 To summarize, our decision is as follows.

10 • The rejection of claims 1-25 under 35 U.S.C. § 102(e) as anticipated
11 by Litzow is not sustained.

12 • The rejection of claim 26 under 35 U.S.C. § 102(e) as anticipated by
13 Litzow is sustained.

14

15 No time period for taking any subsequent action in connection with this
16 appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

17

18 AFFIRM-IN-PART

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22 mev

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25 Address

Appeal 2009-0006762
Application 10/007,105

1 ELSA KELLER
2 INTELLECTUAL PROPERTY DEPARTMENT
3 SIEMENS CORPORATION
4 186 WOOD AVENUE SOUTH
5 ISELIN NJ 08830